

## § 25.85

portion of the brewery or bonded or taxpaid premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended, 1389, as amended, 1390, as amended (26 U.S.C. 5401, 5411, 5415))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986; as amended by T.D. ATF-299, 55 FR 24989, June 19, 1990]

### DISCONTINUANCE OF BUSINESS

#### § 25.85 Notice of permanent discontinuance.

When a brewer desires to discontinue business permanently, he or she must file a notice on Form 5130.10. The brewer must state the purpose of the notice as "Discontinuance of business" and give the date of the discontinuance. When all beer has been lawfully disposed of, appropriate TTB officer will approve the Form 5130.10 and return a copy to the brewer. The brewer shall file a report on Form 5130.9 showing no beer or cereal beverage on hand and marked "Final Report."

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-437, 66 FR 5479, Jan. 19, 2001]

### Subpart H—Bonds and Consents of Surety

#### § 25.91 Requirement for bond.

(a) *General.* Every person intending to commence the business of a brewer shall file a bond, Form 5130.22, as prescribed in this subpart, covering operations at the brewery, at the time of filing the original Brewer's Notice, Form 5130.10. Every brewer intending to continue the business of a brewer shall, once every 4 years, or as provided in § 25.95, execute and file a new bond, or continuation certificate as provided in § 25.97.

(b) *Conditions of the bond.* The Brewer's Bond, Form 5130.22, will be conditioned upon the brewer faithfully complying with all provisions of law and regulations relating to the activities covered by the bond, and upon paying all taxes imposed by 26 U.S.C. Chapter 51 and all interest and penalties incurred or fines imposed for violations of those provisions.

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(c) *Additional information.* The appropriate TTB officer shall require, in connection with any brewer's bond, a statement executed under the penalties of perjury, as to whether the principal or any person owning, controlling, or actively participating in the management of the business of the principal has been convicted of or has compromised any offense set forth in § 25.101(a)(1), or has been convicted of any offense set forth in § 25.101(a)(2). In the event the above statement contains an affirmative answer, the applicant shall submit a statement describing in detail the circumstances surrounding the conviction or compromise.

(d) *Bond required before beginning business.* A person may not begin business or continue business as a brewer until first receiving notice that the appropriate TTB officer has approved the bond, continuation certificate, or consent of surety, as required by this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401); sec. 4(a), Pub. L. 91-673, 84 Stat. 2057 (26 U.S.C. 5417))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-437, 66 FR 5479, Jan. 19, 2001]

#### § 25.92 Consent of surety.

A brewer may change the terms of any bond filed under this part by filing a consent of surety. Consents of surety will be executed on Form 1533 (5000.18) by the brewer and the surety on the bond, with the same formality and proof of authorization as required for the execution of a bond.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

#### § 25.93 Penal sum of bond.

(a)(1) *Brewers filing semimonthly tax returns.* For brewers filing tax returns and remitting taxes semimonthly under § 25.164(c)(2), the penal sum of the brewers bond must be equal to 10 percent of the maximum amount of tax calculated at the rates prescribed by law which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(i) Removed for transfer to the brewery from other breweries owned by the same brewer;

(ii) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(iii) Removed without payment of tax for use in research, development, or testing; and

(iv) Removed for consumption or sale.

(2) *Brewers filing quarterly tax returns.* For brewers filing tax returns and remitting taxes quarterly under § 25.164(c)(2), the penal sum of the brewers bond must be equal to 29 percent of the maximum amount of tax calculated at the rates prescribed by law which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(i) Removed for transfer to the brewery from other breweries owned by the same brewer;

(ii) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(iii) Removed without payment of tax for use in research, development, or testing; and

(iv) Removed for consumption or sale.

(b) *Concentrate.* A brewer who concentrates beer under subpart R of this part shall calculate the penal sum of the bond by computing 10 percent of the amount of tax at the rates prescribed by law, on the maximum quantity of beer used in the production of concentrate during a calendar year. The brewer shall add this amount to the penal sum calculated under paragraph (a) of this section to determine the total penal sum of the brewer's bond.

(c) *Maximum and minimum penal sums.* The maximum penal sum of the bond (or total penal sum if original and strengthening bonds are filed) is not to exceed \$150,000 when the tax on beer is to be prepaid, or \$500,000 when the tax is to be deferred as provided in § 25.164. The minimum penal sum of a bond is \$1,000.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. TTB-41, 71 FR 5603, Feb. 2, 2006; T.D. TTB-89, 76 FR 3511, Jan. 20, 2011]

EFFECTIVE DATE NOTE: By T.D. TTB-89, 76 FR 3511, Jan. 20, 2011, § 25.93 was amended by

revising paragraph (a), effective Feb. 22, 2011 to Feb. 24, 2014.

#### § 25.94 Strengthening bonds.

(a) *Requirement.* When the penal sum of the brewer's bond (calculated as provided in § 25.93) in effect is not sufficient, the principal may prepay the tax on beer as provided in subpart K of this part, or give a strengthening bond in sufficient penal sum if the surety is the same as on the bond in effect. If the surety is not the same, a new bond covering the entire liability is required.

(b) *Restrictions.* A strengthening bond may not in any way release a former bond or limit a bond to less than the full penal sum.

(c) *Date of execution.* Strengthening bonds will show the current date of execution and their effective date.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

#### § 25.95 New bond.

The appropriate TTB officer may at any time, at his or her discretion, require a new bond. A new bond is required immediately in the case of insolvency of a surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity shall execute a new bond or obtain a consent of surety on all bonds in effect. When the interests of the Government so demand, or in any case when the security of the bond becomes impaired for any reason, the principal will be required to give a new bond. When a bond is found to be not acceptable by the appropriate TTB officer, the principal will be required immediately to obtain a new and satisfactory bond or discontinue business.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

#### § 25.96 Superseding bond.

When the principal submits a new bond to supersede a bond or bonds in effect, the appropriate TTB officer, after approving the superseding bond, will issue a notice of termination for the superseded bond under the provisions of this subpart. Superseding bonds will show the current date of execution and their effective date.